

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 976 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

RUPLAL SAVA KATARA

Versus

STATE OF GUJARAT

Appearance:

Legal Assistance from Mr. M.J. Buddhahhatti
for the appellant.
MR SP DAVE, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 06/05/98

ORAL JUDGEMENT

At the outset it might be noted that this appeal came to be listed in the Board of 2nd February, 1998 and since the appellant was in custody it was required to be taken in priority. Accordingly, on number of occasions this matter had been called out. But Mr. Bharat Balsare

learned advocate appearing for the appellant was not available. Under such circumstances, Mr. M.J. Buddhahatti who appears in the criminal matters and who has vide experience and who is also a senior advocate practising in this Court was requested to assist the cause of the appellant. That is how the matter could be taken up for hearing before this court.

2. The appellant who stood convicted for the offence punishable u/s 380 of the Indian Penal Code (IPC for short) was sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of Rs. 4,000/i/d to suffer rigorous imprisonment for a period of four months, has preferred this appeal against the impugned judgment and order dated 30th September, 1994 rendered by the learned Additional City Sessions Judge, Court No.3, Ahmedabad in Sessions Case No. 373 of 1993.

3. The facts of the prosecution case might be gathered from the impugned judgment :

It so happened that on 27th July, 1993 during the period from 1-30 to 4-30 p.m. one Savitaben was present at her home in "Kailash Apartments", near "L" Colony, Ambawadi, Ahmedabad. The flat belonged to her daughter-in-law Puspaben Suryakant Bhatia. It has been alleged that the present appellant being accused in the aforesaid sessions case accompanied another absconding accused who trespassed upon the aforesaid residential place and caused serious injuries to aforesaid Savitaben by strangulating her with a plastic string and by giving blows of knife and screwdriver (dismis). The said injuries resulted in the death of Savitaben. The said accused ultimately committed robbery of the gold ornaments, silver coins and cash amount of the total value of Rs. 14,750/- and ran away. P.S.I. Mr. Surendrakumar Gambhirsinh Gohil was informed by the Police Station Officer Mohanlal at about 6-15 p.m. on the same day that there was a message received from one Suryakant Bhatia to the effect that some one had committed theft in the house and also murder of his mother. Consequently, said P.S.O Mr. Mohanlal had sent P.S.I. Mr. Parmar to the scene of offence. Accordingly P.S.I. Mr. Gohil had gone to the scene of offence where aforesaid Puspaben Suryakant Bhatia lodged her complaint regarding her mother-in-law Savitaben's murder and robbery committed by someone. After necessary panchanama of the muddamal articles and identification of the present appellant - accused person and the panchanama with regard to scene of offence having been made and after finger print expert's report and report of Forensic

Science Laboratory (FSL) were received the charge sheet was submitted against the present appellant-accused. In so far as the absconding accused person is concerned, proper proceedings of publishing required notification in the Government Gazette were undertaken. Learned Metropolitan Magistrate, Court No. 15, Ahmedabad by his order dated 22nd November, 1993 committed the case to the City Sessions Court, Ahmedabad for the offence punishable u/s 302 and other provisions of the IPC.

4.. The present accused faced the charge for the offences punishable u/s 302 r/w/s 114 of the IPC and u/s 394 and 114 of the IPC as per the charge exh. 1. After recording the evidence, further statement of the present accused person u/s 313 of the Cr.P.C., 1973 (II of 1974) was recorded and after hearing the submissions of both the sides, the learned Additional City Sessions Judge came to the conclusion that the only material available from the prosecution evidence was with regard to the accused person having committed theft from the residential house of the complainant and bearing in mind the facts of the case he convicted the present accused person of the offence punishable u/s 380 of the IPC and sentenced him to undergo rigorous imprisonment for the period of four years and to pay fine of Rs. 4,000/i/d to suffer rigorous imprisonment for a period of four months.

5. Mr. Buddhabhatti learned advocate read the evidence adduced before the learned Additional City Sessions Judge. According to his submissions the investigating agency has failed to find out real culprit and there was no sufficient evidence before the learned Additional City Sessions Judge to connect the present accused person even for the offence punishable u/s 380 of the IPC. According to his submissions merely from the evidence with regard to find of the muddamal articles complicity of the present accused in the crime could not be said to have been established beyond reasonable doubt. He has relied upon the evidence of p.w. no. 14 and 11. For the purpose of appreciating the submissions of Mr. Buddhabhatti reference might be made to the said two pieces of evidence.

6. P.W. No. 11 Ravjibhai Lagharbhai Chavda exh. 22 who happened to be P.S.I. Ellisbridge Police Station, Ahmedabad was required to go to village Kahari District Dungarpur, Rajasthan for making inquiry about suspect Ruplal Sava Katara. He was accompanied with Ibrahim and other police persons as also panchas Ramesh Gagji and Thavara. When they were about to reach the house of the accused Ruplal, they saw accused Ruplal and Ramji Katara

running away from a far off distance. The witness and other persons chased them but they could not trace them out as they had taken shelter in the forest. The witness and other persons therefore were required to go to the house of accused Ruplal where his grand father Khatubhai was present. Upon search having been made in presence of the two panchas the muddamal articles in the form of the two gold chains with the inscription of "Shruti" and "Jagruti", one Rico wrist watch which was broken from one side, two gold articles with the inscription of "Om", silver coins in the sum of Rs. 25/- were found in one box. The said muddamal articles were seized in the presence of the panchas under the panchanama prepared in that respect. The statement of the present accused's grand father was recorded. Thereafter, search of the house of other accused was carried out and inquiry then was made with regard to Ramji Sava Katara at his father-in-law's place but he could not be traced out. However, after repeated search the present accused could be apprehended from village Katara. This witness in his cross-examination has deposed that he had received the written order from the Police Inspector for visiting village Katara in order to search out two suspects. He denied the suggestion that two panchas who were taken with the witness were some of the accused persons. He denied the suggestion that no assistance was taken from the local police of Rajasthan. The witness clarified that for the purpose of seeking such assistance a report was given.

7. It appears that nothing substantial could be found out from the cross-examination of this witness who is an important witness with regard to the muddamal articles having been located from the house where the present accused person was residing. He had deposed to the facts with regard to how the present accused ran away seeing the witness and other police persons. He has also stated with regard to how the present accused person could be apprehended after passage of some time. He has finally testified to the facts with regard to the panchanama having been made in presence of the panchas at the house of the present accused. It cannot be disputed that conviction can be based upon the evidence of a police officer or an Investigating Officer.

8. P.W. No. 14 Surendrakumar Gambhirsinh Gohil exh. 27 who happened to be the Investigating Officer in respect of the crime in question has deposed to the facts of the prosecution case with regard to how he had been informed about commission of the offences as stated above. He has also deposed to different phases of the

investigation he had undertaken. He has recorded the statement of the witnesses. One of the witnesses Smitaben Bharatbhai residing at the upper floor of the premises in which the offence has taken place informed him that when she had gone for shopping at about 2-00 O'clock in the afternoon she had seen one pair of sport shoes, white in colour and one pair of sleeper green in colour. She stated that she thought the domestic servant might have gone inside the house. He has recorded the statements of other household servants attending the household work of the nearby properties. As a result of the investigation so carried out he had an occasion to issue the order with regard to making inquiry about household servant Ramji Jiva who was working in the house of the complainant. As a result, the inquiry was made by P.S.I. Mr. Chavda and the present accused was produced along with the muddamal before him. He had also an occasion to have panchanama made with regard to the identification of the present accused being made in presence of the pancha witnesses and the complainant. He had an occasion to take the accused person at his instance at the scene of the offence where he was required to show the place where screwdriver was lying. After the investigation was over he was required to present the charge-sheet. He has deposed that during the course of investigation he was required to make panchanama with regard to the muddamal articles recovered from the house of the accused person. He identified the said articles and testified with regard to the panchanama. Even referring to the cross-examination of this witness also nothing could be traced out. It is true that the present accused was not working as a household servant in the house of the complainant. It clearly appears from the evidence that the muddamal articles which were identified by the concerned witness were recovered from the house of the present accused person. The most important items of the muddamal were two gold chains having inscription of "Shruti" and "Jagriti". The fact regarding inscriptions on these articles (two gold chains) appeared right from the very beginning even before the present accused could be apprehended. In the search that was required to be carried out by the aforesaid witness these muddamal articles were the same articles which were recovered from the house of the present accused. The fact with regard to the present accused having one occasion to escape has clearly appeared in the evidence of the aforesaid first witness. Under such circumstances, the learned Additional City Sessions Judge has rightly found that the present accused was involved in the offence with regard to commission of theft from the residential house of the

complainant. It is true that the present accused could not be connected with the offence of murder either from the evidence of any witness or from any of the circumstances flowing from the prosecution evidence. It is also true that the main accused person has been absconding. However, the fact that the stolen muddamal articles were found from the house wherein the present accused was residing with his grand father, clearly connects him with the offence of theft. In my opinion, the learned Additional City Sessions Judge has upon appreciation of the evidence rightly convicted the present accused of the aforesaid offence.

9. Mr. S.P. Dave, Learned A.P.P. for the State has firstly made reference to a decision of the Honourable Supreme Court in the case of Ayodhya Singh Vs. State of Rajasthan reported in AIR 1972 SUPREME COURT 2501, wherein it has been observed that when one or two or a very few of stolen articles were recovered from the accused there might be some doubt but where bulk of stolen articles were found from the possession of the accused persons the Courts should be justified in drawing presumption that the accused persons would be guilty of the offence under Sections 457 and 380 of the IPC. In the present case, the facts are on better footing inasmuch as out of the muddamal articles which were identified by the complainant party two muddamal articles were gold chains with the inscriptions of "Shruti" and "Jagruti" and description of such articles was given right from the very beginning, by the complainant. Therefore, the panchanama with regard to recovery of the muddamal articles in question clearly connects the present accused with the offence punishable u/s 380 of the IPC.

10. Mr. S.P. Dave, learned A.P.P. for the State also referred to a decision of the Apex Court in the case of Bhagwansinh Vs. State of Haryana, reported in AIR 1976 SUPREME COURT 202, wherein it has been observed there was no legal bar to base conviction upon the testimony of the witness who was declared hostile and even when he was permitted to be cross-examined by the Public Prosecutor his testimony if corroborated by other reliable evidence should be accepted.

11. In the present case, a reference has been made to the evidence of the pancha witness Ramesh Dangjibhai P.W. No. 8 exh. 18 who in his cross-examination by the learned A.P.P. has admitted that he had an occasion to go to the house of the present accused whom he knew. He has also admitted that the police had an occasion to make

search of the said house. He also admitted that one bag of black colour was found from the said house. He also admitted that the muddamal articles which have been described in the panchanama were recovered from the house of the present accused. The submission of Mr. Dave, learned A.P.P. for the State, therefore, will obviously stand fortified by the aforesaid decision of the Honourable Supreme Court in so far as the present accused is concerned.

12. It is not in dispute that P.W. 2 Suryakant Bhatia exh. 8 had identified the present accused in the Court. This witness had an occasion to see the present accused accompanying his household servant Ramji. P.W. No. 1 Pushpaben Suryakant Bhatia exh. 4 has identified the muddamal articles referred to hereinabove.

13. In view of the aforesaid, the learned Additional City Sessions Judge cannot be said to have faulted in accepting the prosecution evidence while convicting the present accused person, as aforesaid.

14. In the result, this appeal fails and the same is accordingly dismissed.

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